

1 COUNTY COUNCIL
2 OF
3 HARFORD COUNTY, MARYLAND
4 BILL NO. 20-029

5 Introduced by Council President Vincenti at the request of the County Executive
6 Legislative Session Day No. 20-026 Date: October 13, 2020

7 A BILL approving and providing for a multi-year Installment Purchase Agreement by Harford County,
8 Maryland (the "County"), pursuant to Article II of Chapter 60 of the Harford County Code, as
9 amended by Bill No. 11-07, enacted by the County Council of Harford County, Maryland on April
10 5, 2011, approved by the County Executive on April 12, 2011, and effective on June 13, 2011 (the
11 "Agricultural Land Preservation Act"), to acquire Development Rights (each as defined in the
12 Agricultural Land Preservation Act) in approximately 161.7 acres, more or less, of agricultural land
13 located at 236 Chestnut Hill Road, Forest Hill, Maryland within the County, containing
14 approximately eleven (11) Development Rights, more or less, pursuant to a perpetual Development
15 Rights Easement restricting use of such land to Agricultural Use from Hebert W. Harkins and
16 Patricia A. Harkins, or any other owner thereof for an aggregate purchase price not to exceed
17 \$935,000.00, plus interest thereon; provided, however, that the actual amount of the purchase price
18 shall be determined as provided herein pursuant to the Agricultural Land Preservation Act;
19 providing that the County's obligation to pay such purchase price and interest thereon shall be a
20 full faith and credit obligation of the County; providing for the levying of taxes for such payments;
21 providing for a one-time cash incentive payment; authorizing the County Executive and Treasurer
22 to make modifications to such Agreement under certain circumstances; providing for and
23 determining various matters in connection therewith.

24 By the Council, October 13, 2020

25 Introduced, read first time, ordered posted and public hearing scheduled
26 on: November 10, 2020
27 at: 7:00 PM

28 By Order: *Mylia A. Dixon*, Council Administrator

29 PUBLIC HEARING

30 Having been posted and notice of time and place of hearing and title of Bill having been
31 published according to the Charter, a public hearing was held on _____, and concluded
32 on _____.

33 _____, Council Administrator

34 EXPLANATION: CAPITALS INDICATE MATTER ADDED TO EXISTING LAW. [BRACKETS] indicate matter deleted from existing law. Underlining
35 indicates language added to Bill by amendment. Language lined through indicates matter stricken out of Bill by amendment.

RECITALS

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2 In accordance with the provisions of Section 524 of the Charter of Harford County, Maryland (the
3 “Charter”), the Annual Budget and Appropriation Ordinance of Harford County, Maryland (the “County”)
4 for fiscal year 2021, Bill No. 20-009, As Amended (the “Budget Ordinance”) includes an appropriation
5 (Agricultural Preservation – County) permitting the County to enter into, pursuant to Article II of Chapter
6 60 of the Harford County Code, as amended by Bill No. 11-07, enacted by the County Council of Harford
7 County, Maryland (the “County Council”) on April 5, 2011, approved by the County Executive of Harford
8 County, Maryland (the “County Executive”) on April 12, 2011 and effective on June 13, 2011 (the
9 “Agricultural Land Preservation Act”), Installment Purchase Agreements (as defined in the Agricultural
10 Land Preservation Act) to acquire Development Rights (as defined in the Agricultural Land Preservation
11 Act) in Agricultural Land and Woodland (each as defined in the Agricultural Land Preservation Act) located
12 within the County. The Budget Ordinance was adopted by the County Council in accordance with the
13 Charter.

14 Section 520 of the Charter provides that “any contract, lease, or other obligation in excess of three
15 thousand dollars requiring the payment of funds from the appropriations of a later fiscal year shall be
16 authorized by legislative act,” Section 524 of the Charter permits the County to incur debt and pursuant to
17 the Agricultural Land Preservation Act, the County is authorized and empowered to enter into Installment
18 Purchase Agreements to purchase conservation easements for agricultural land preservation purposes in the
19 form of Development Rights Easements (as defined in the Agricultural Land Preservation Act).

20 The Agricultural Land Preservation Act provides that after review by the Harford County
21 Agricultural Land Preservation Advisory Board in accordance with the County’s Easement Priority
22 Ranking System (as such term is used in the Agricultural Land Preservation Act) and approval by the
23 Harford County Board of Estimates, the County Council may approve and provide for the acquisition of
24 Development Rights in each particular parcel of Agricultural Land and Woodland.

1 Attached to this Bill as Exhibit A is an application to sell a Development Rights Easement signed
2 by the owner(s) of the Agricultural Land described below.

3 Attached to this Bill as Exhibit B are records of the Harford County Agricultural Land Preservation
4 Advisory Board evaluating all applications to sell Development Right Easements to the County, with each
5 application ranked pursuant to the County’s Easement Priority Ranking System.

6 The County has now determined to enter into an Installment Purchase Agreement with Herbert W.
7 Harkins and Patricia A. Harkins and/or any other person or entity that is or becomes the owner of all or any
8 portion of the following described land prior to execution and delivery of such Installment Purchase
9 Agreement (the “Seller”), in order to acquire the Development Rights in approximately 161.7 acres, more
10 or less, of Agricultural Land located at 236 Chestnut Hill Road, Forest Hill, Maryland within the County
11 (the “Land”), containing approximately eleven (11) Development Rights, more or less, for an aggregate
12 purchase price not to exceed \$935,000.00 (the “Maximum Purchase Price”), plus interest thereon as
13 hereinafter provided; provided, however, that the actual amount of the purchase price shall be determined
14 in accordance with the Agricultural Land Preservation Act and shall be equal to the lesser of (i) the
15 Maximum Purchase Price or (ii) \$100,000.00 multiplied by the first six (6) Development Rights (per parcel)
16 and \$50,000.00 for each additional Development Right above six (6) (per parcel) based on the actual
17 number of Development Rights in the Land, which latter amount represents the least of the three amounts
18 calculated as the purchase price on the basis of the following factors: (i) the Maximum Easement Per Acre
19 Value (as defined in the Agricultural Land Preservation Act), (ii) the Maximum Development Right Value
20 (as defined in the Agricultural Land Preservation Act) and (iii) Maximum Per Acre Value (as defined in
21 the Agricultural Land Preservation Act and also referred to therein as the “maximum per acre cap”).

22 The County, in its discretion and based upon the review of the Agricultural Land Preservation
23 Advisory Board, has also determined to make a one-time cash incentive payment in an amount not to exceed
24 \$161,700.00 to the Seller, since the Land is located in the agricultural preservation incentive area of the
25 County as set forth on the 2017 Agricultural Preservation Incentive Map, all in accordance with Section
26 60-12 J(3) of the Agricultural Land Preservation Act.

1 NOW, THEREFORE:

2 SECTION 1. BE IT ENACTED BY THE COUNTY COUNCIL OF HARFORD COUNTY,
3 MARYLAND, That

4 (a) Harford County, Maryland (the “County”) shall enter into an Installment Purchase
5 Agreement (the “Installment Purchase Agreement”) with Herbert W. Harkins and Patricia A. Harkins
6 and/or any other person or entity that is or becomes the owner of all or any portion of the Land (hereinafter
7 defined) prior to the execution and delivery of the Installment Purchase Agreement (the “Seller”) in order
8 to acquire the Development Rights on approximately 161.7 acres, more or less, of Agricultural Land located
9 at 236 Chestnut Hill Road, Forest Hill, Maryland within the County (the “Land”), containing approximately
10 eleven (11) Development Rights, more or less, for an aggregate purchase price not to exceed \$935,000.00
11 (the “Maximum Purchase Price”), plus interest thereon as hereinafter provided; provided, however, that the
12 actual amount of the purchase price (the “Purchase Price”) shall be determined in accordance with the
13 Agricultural Land and Preservation Act and shall be equal to the lesser of (i) the Maximum Purchase Price
14 or (ii) \$100,000.00 multiplied by the first six (6) Development Rights (per parcel) and \$50,000.00 for each
15 additional Development Right above six (6) (per parcel) based on the actual number of Development Rights
16 in the Land, which latter amount represents the least of the three amounts calculated as the purchase price
17 on the basis of the following factors: (i) the Maximum Easement Per Acre Value (as defined in the
18 Agricultural Land Preservation Act), (ii) the Maximum Development Right Value (as defined in the
19 Agricultural Land Preservation Act) and (iii) Maximum Per Acre Value (as defined in the Agricultural Land
20 Preservation Act and also referred to therein as the “maximum per acre cap”). The Purchase Price shall be
21 set forth in the Installment Purchase Agreement between the County and the Seller, and the deferred portion
22 of the Purchase Price not paid on the Closing Date (hereinafter defined) shall be set forth in the Installment
23 Purchase Agreement.

24 (b) The Installment Purchase Agreement shall be in substantially the form attached
25 hereto as Exhibit C and made a part hereof, and in such form the Installment Purchase Agreement is hereby

1 approved as to form and content. The Installment Purchase Agreement shall be dated as of the date of its
2 execution and delivery by the County and the Seller (the “Closing Date”).

3 (c) A portion of the Purchase Price in an amount equal to 25% thereof shall be paid in
4 cash to the Seller on the Closing Date. The balance of the Purchase Price shall be paid to the Seller in
5 installments in each year thereafter to and including a date not more than 10 years after the Closing Date.
6 The dates on which each such installment is payable shall be determined by the County Executive and the
7 Treasurer of the County (the “Treasurer”) and shall be set forth in the Installment Purchase Agreement.

8 (d) Interest on the unpaid balance of the Purchase Price shall accrue from the Closing
9 Date and shall be payable at least annually until payment in full of the Purchase Price at a fixed interest rate
10 equal to the yield on U.S. Treasury STRIPS maturing on the date next preceding the final maturity date in
11 the Installment Purchase Agreement determined as of the business day preceding the Closing Date. Interest
12 shall be calculated on the basis of a 360-day year of twelve 30-day months.

13 (e) The County’s obligation to pay the Purchase Price and the interest thereon under
14 the Installment Purchase Agreement is and shall be a general obligation of the County and is and shall be
15 made upon its full faith and credit and taxing power.

16 (f) The County shall also make a one-time cash incentive payment in an amount not
17 to exceed \$161,700.00 to the Seller on the Closing Date, since the Land is located in the agricultural
18 preservation incentive area of the County as set forth on the 2017 Agricultural Preservation Incentive Map,
19 all in accordance with Section 60-12(J)(3) of the Agricultural Land Preservation Act.

20 SECTION 2. BE IT FURTHER ENACTED BY THE COUNTY COUNCIL OF HARFORD
21 COUNTY, MARYLAND,

22 That it is hereby found and determined that:

23 (a) The acquisition of the Development Rights in the Land as set forth in Section 1 of
24 this Bill and in the form of the Installment Purchase Agreement attached hereto as Exhibit C is in the best
25 interests of the County.

1 (b) The Installment Purchase Agreement is a contract providing for the payment of
2 funds at a time beyond the fiscal year in which it is made and requires the payment of funds from
3 appropriations of later fiscal years.

4 (c) Funds for the payment of the Purchase Price and the interest thereon under the
5 Installment Purchase Agreement are included in the Budget Ordinance.

6 (d) The County shall acquire the Development Rights in the Land in perpetuity.

7 (e) The Purchase Price is within the legal limitation on the indebtedness of the County
8 as set forth in Section 10-203 of the Local Government Article of the Annotated Code of Maryland.

9 (f) The cost of acquiring the Development Rights in the Land is equal to the Purchase
10 Price.

11 (g) The only practical way to acquire the Development Rights in the Land is by private
12 negotiated agreement between the County and the Seller.

13 SECTION 3. BE IT FURTHER ENACTED BY THE COUNTY COUNCIL OF HARFORD
14 COUNTY, MARYLAND, That the Installment Purchase Agreement shall be signed by the County Executive
15 by his manual signature, and the Installment Purchase Agreement shall bear the corporate seal of the County,
16 attested by the manual signature of the Director of Administration of the County (the "Director of
17 Administration"). In the event that any officer whose signature shall appear on the Installment Purchase
18 Agreement shall cease to be such officer before the delivery of the Installment Purchase Agreement, such
19 signature shall nevertheless be valid and sufficient for all purposes, the same as if such officer had remained in
20 office until delivery.

21 SECTION 4. AND BE IT FURTHER ENACTED BY THE COUNTY COUNCIL OF
22 HARFORD COUNTY, MARYLAND, That the County Executive and the Treasurer are hereby authorized,
23 prior to execution and delivery of the Installment Purchase Agreement, to make such changes or modifications
24 in the form of the Installment Purchase Agreement attached hereto as Exhibit C as may be required or deemed
25 appropriate by them in order to accomplish the purpose of the transactions (including, but not limited to, the
26 establishment of interest and principal payment dates in each year that the Installment Purchase Agreement is

1 outstanding) authorized by this Bill; provided that such changes shall be within the scope of the transactions
2 authorized by this Bill and the execution of the Installment Purchase Agreement by the County Executive shall
3 be conclusive evidence of the approval by the County Executive and the Treasurer of all changes or
4 modifications in the form of the Installment Purchase Agreement and shall thereupon become binding upon
5 the County in accordance with its terms, as authorized by Section 524 of the Charter and the Agricultural Land
6 Preservation Act (collectively, the “Enabling Legislation”) and as provided for in this Bill.

7 SECTION 5. BE IT FURTHER ENACTED BY THE COUNTY COUNCIL OF HARFORD
8 COUNTY, MARYLAND, That the County Executive is hereby authorized, after the execution and delivery
9 of the Installment Purchase Agreement, to enter amendments to the Installment Purchase Agreement with
10 the Registered Owner solely to correct any mistake or to cure any formal defect, omission, inconsistency
11 or ambiguity therein.

12 SECTION 6. BE IT FURTHER ENACTED BY THE COUNTY COUNCIL OF HARFORD
13 COUNTY, MARYLAND, That the County Executive, the Director of Administration, the Treasurer and
14 other officials of the County are hereby authorized and empowered to do all such acts and things and to
15 execute, acknowledge, seal and deliver such documents (including a Tax Certificate and Compliance
16 Agreement) and certificates as the County Executive may determine to be necessary to carry out and comply
17 with the provisions of this Bill subject to the limitations set forth in the Enabling Legislation and any
18 limitations set forth in this Bill.

19 SECTION 7. BE IT FURTHER ENACTED BY THE COUNTY COUNCIL OF HARFORD
20 COUNTY, MARYLAND, That the Treasurer is hereby designated and appointed as registrar and paying
21 agent for the Installment Purchase Agreement (the “Registrar”). The Registrar shall maintain, or cause to be
22 maintained, books of the County for the registration and transfer of ownership of the Installment Purchase
23 Agreement. In addition, the County may, from time to time, designate and appoint the Department of the
24 Treasury of the County, any officer or employee of the County or one or more banks, trust companies,
25 corporations or other financial institutions to act as a substitute or alternate registrar or paying agent for the
26 Installment Purchase Agreement, and any such substitute or alternate shall be deemed to be the Registrar or

1 an alternate Registrar for all purposes specified in the resolution appointing such substitute or alternate.
2 Any such appointment shall be made by the County Council by resolution and the exercise of such power
3 of appointment, no matter how often, shall not be an exhaustion thereof.

4 SECTION 8. BE IT FURTHER ENACTED BY THE COUNTY COUNCIL OF HARFORD
5 COUNTY, MARYLAND, That for the purpose of paying the installments of the Purchase Price when due
6 and payable and the interest on the unpaid balance of the Purchase Price when due and payable, there is
7 hereby levied, and there shall hereafter be levied in each fiscal year that any portion of the Purchase Price
8 payable under the Installment Purchase Agreement remains outstanding, ad valorem taxes on real and
9 tangible personal property and intangible property subject to taxation by the County, without limitation of
10 rate or amount, and, in addition, upon such other intangible property as may be subject to taxation by the
11 County within limitations prescribed by law, in an amount sufficient, together with the portion of the
12 transfer tax imposed on transfers of real property in Harford County which is dedicated to agricultural land
13 preservation and other available funds, to pay any installment of the Purchase Price under the Installment
14 Purchase Agreement maturing during the succeeding year and to pay the annual interest on the outstanding
15 balance of the Purchase Price until the Purchase Price and all interest have been paid in full; and the full
16 faith and credit and the unlimited taxing power of the County are hereby irrevocably pledged to the punctual
17 payment of the Purchase Price under the Installment Purchase Agreement and the interest on the unpaid
18 balance of the Purchase Price as and when the same respectively become due and payable.

19 SECTION 9. BE IT FURTHER ENACTED BY THE COUNTY COUNCIL OF HARFORD
20 COUNTY, MARYLAND, That this Bill shall take effect 60 calendar days after it becomes law.

21 EFFECTIVE: _____

22 The Council Administrator of the Council does hereby
23 certify that 7 copies of this Bill are immediately available
24 for distribution to the public and the press.
25
26

27 
28 _____
Council Administrator

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EXHIBIT A
Application

As Introduced

**HARFORD COUNTY, MARYLAND
DEPARTMENT OF PLANNING & ZONING**

Harford County Administrative Office Building
220 South Main Street
Bel Air, Maryland 21014
410.638.3103

Harford County Agricultural Land Preservation Application

1. This is an application only and does not bind the landowner to accepting an offer, it just allows for ranking and pricing of the property for the program.
2. If any item includes a choice indicated by a box, please check the appropriate box and include or attach any other information required.
3. Each item should be completed as fully as possible by all applicants, unless otherwise indicated. If you are uncertain as to whether particular information is applicable to an item, please still include such information.
4. Please feel free to expand your answers by attaching additional sheets if necessary.
5. This is an application to sell a conservation easement to Harford County, Maryland pursuant to the Harford County Agricultural Land Preservation Act [Bill No. 93-2 as passed by the Harford County Council on April 6, 1993 (the "Act")]. After sale of the conservation easement, the only use of the land permitted under the Act is agricultural.
6. This application is subject to review by the Harford County Agricultural Land Preservation Advisory Board, and the land will be evaluated in accordance with the Harford County Easement Priority Ranking System.
7. Landowner will be notified when ranking will take place and is welcome to attend board meeting and is welcome to request draft easement and other program documents available.

I. APPLICANT (i.e., the owner of the land). Indicate the portion owned by each owner.

A. Correct legal name: Walter Herbert Harkins

B. Contact person: Herbert Harkins

C. Property address & mailing address if different:

236 Chestnut Hill Rd.
Forest Hill Md. 21050

D. Telephone No. 410 889 169 e-mail herbie harkins@gmail.com

E. Social Security Number or Tax Identification Number for each owner.

(can wait until offer is made for ID security reasons)

217-64-1219

F. Type of legal entity:

- individual
- corporation incorporated in the State of _____
- general partnership created in the State of _____
- limited partnership created in the State of _____
- limited liability company created in the State of _____

G. Description of Applicant's business and percentage of income attributed to agricultural production: _____

Dairy Farm

H. Legal Counsel representing Applicant in proposed transaction:

1. Name: Bob Kahoe
2. Address: Bel Air

3. Telephone No. 410 838 5210 e-mail _____

I. Surveyor representing applicant

1. Name: Joe Thompson
2. Address: Bel Air

3. Telephone No. _____ Fax No. _____

J. Information concerning ownership (attach copy of deed(s) for all parcels).

Please list below all information for each parcel contained in this easement purchase.

1. Date of acquisition; recording reference; tax account; tax map and parcel number; acres; development rights, family conveyances or easement restriction applied to each parcel.

1993 (1919/286)

K. List mortgagees or deeds of trust or other encumbrances (including leases). Lien holders will be required to subordinate their mortgage or deed of trust to the easement of the County so please discuss with them.

Hartford Bank

L. Describe all uses currently made of the land and by whom:
Agricultural

Dairy farm

Non-Agricultural

none

M. Family history of the property including cultural or historic aspects and importance in preserving.

Owned by Grand parents
the Partent

N. Identify family conveyance members and address if applicable.

<u>Name</u>	<u>Address</u>
N/A	

O. Identify all residences and buildings on the land with sq. footage of each.

main 2,500 sq ft
Garage 1st 2,300

tract #2 1,500

tract #3 1,700

P. Identify all soil and/or water conservation plans in effect concerning the land and if all practices are applied (forward copy of SCS plan). Bmps in place.

See Arthur's Dairy Farm

Q. Environmental and water quality highlights of farm.

Various buffers and NACS practices in place

R. Farm land breakdown

Cropland acres 65

Pasture acres 76

Woodland acres 6

Homestead acres 147

Other

S. Innovative farming practices on farm including value adding.

Dairy Farm

II. EXECUTION

It is understood that the above information is submitted in good faith, based on present expectations of the Applicant, to aid the Agricultural Land Preservation Advisory Board of Harford County, Maryland in its consideration of this application for the sale of a development rights easement to Harford County, Maryland.

The information in this application and supporting exhibits is true and complete to the best of my/our knowledge and is submitted for the purpose of the sale of my residential development rights and the placement of a conservation easement on my property to be held by Harford County, Maryland. I/We authorize Harford County to conduct whatever investigation it feels is necessary to properly evaluate and process this application. I/We understand that this application is subject to review and approval by the Agricultural Land Preservation Advisory Board, County Executive and by the County Council of Harford County, Maryland. We also understand this is only an application and does not commit the landowner to accept an offer.

Forest Hill
Dated at ~~Harford~~ Forest Hill (City), on MD (State), on 8/28, 20____.
W. H. H. H. H.
Patricia Ann H. H.

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EXHIBIT B

The Harford County Agricultural Land Preservation Advisory Board Records

As Introduced

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HARFORD COUNTY 2020 AGRICULTURAL PRESERVATION RANKING/EVALUATION

Rank	Name	SDAT AC*	Ranking Score
1	Nancy Jones	203.96	254.57
2	Heaps Family, LLC (Heaps 2)	235.72	237.46
3	Harkins, Herbert & Patricia	146.66	219.85
4	Fielder, Samuel 1 (southern parcel)	149.57	214.45
5	Elliott, Betty L.	42.97	214.28
6	Heaps Family, LLC (Heaps 3-north)	112.87	211.19
7	Fielder, Samuel 2 (northern parcel)	122.64	205.96
8	Heaps, Ann P. Residential Trust (Heaps 1)	64.73	203.88
9	Heaps, Wilson	57.07	203.30
10	Brown, Jennifer Kay	72.67	199.04
11	Johnson, Walter & Katherine	90.13	197.90
12	Smigaj, Denis & Garayoa, Cynthia	68.81	201.34
13	Stewart, Greg & Mary	52.18	194.75
14	Wilson, Garry & Karen	73.80	190.25
15	Livezey, Sara	109.02	187.49
16	Lawrence Farms, LLC Lot 1 (headquarters)	48.81	181.65
17	Heaps Family, LLC (Heaps 4-south)	131.51	176.03
18	Ruszala, Charles	28.45	169.97
19	Lawrence Farms, LLC Lot 2	28.87	168.81
20	Maulsby, David Jr.	150.00	165.89
21	Thompson, Nancy	39.33	158.22
22	Bayne Janet & Ruth Grossnickle	38.00	156.60
23	Martin, Leslie & Karen	21.00	154.83
24	Smith, William	63.42	154.52
25	LeMaster, William	35.80	152.85
26	Skillman, Robert	150.15	152.60
27	Springhouse Family Farm, LLC (Crocker)	20.61	152.02
28	Nair	71.04	151.41
29	Whiteford Land Associates LLC	154.65	148.93
30	Wilson, Louis	38.00	144.07
31	Burdette, Alan Jr & Monica	49.71	143.61
32	Michie, Matthew 2	75.11	141.86
33	Smith, Roy	76.26	139.48
34	Chesapeake Therapeutic Riding	28.66	134.08
35	Michie, Mark W.	64.20	133.11
36	Michie, Matthew 1	53.90	131.63
37	Burdette, Alan Sr. & Roberta	22.80	128.47
38	Phipps, Jeffrey & Darlene	44.85	128.07
39	Fielder, Samuel (wooded parcel)	54.91	126.28
40	JPS properties	100.70	123.4
41	Maliszewski, Thomas & Miriam	70.06	114.60
42	Hutchins, Samuel	12.07	113.78

Rank	Name	SDAT AC*	Ranking Score
43	Profili, Anthony-Terra Bella (parcel 68)	61.43	113.39
44	Markline, Robert	28.73	111.86
45	Langrehr, Harry & Mardella	60.36	111.37
46	Bowman, Gerald	74.00	109.85
47	King, Alvin Lee	64.12	107.71
48	Michie, Matthew & Adele	18.80	106.62
49	Bronston, Paul & Barbara	47.95	105.30
50	Mandl, Karl	33.93	92.21
51	Profili, Anthony parcel 67	46.61	87.49

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AS Introduced

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EXHIBIT C

Form of Installment Purchase Agreement

As Introduced

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HERBERT W. HARKINS
and
PATRICIA A. HARKINS

and

HARFORD COUNTY, MARYLAND

INSTALLMENT PURCHASE AGREEMENT
(No. _____)

INSTALLMENT PURCHASE AGREEMENT

(No. 20__-__)

THIS INSTALLMENT PURCHASE AGREEMENT (“this Agreement”) is made as of the ____ day of _____, 20__ between HERBERT W. HARKINS and PATRICIA A. HARKINS (the “Seller”) and HARFORD COUNTY, MARYLAND, a body corporate and politic of the State of Maryland (the “County”).

RECITALS

A. Pursuant to and in accordance with Article II of Chapter 60 of the Harford County Code, as amended (the “Authorizing Act”), the County is authorized to preserve productive agricultural land and woodland in Harford County, Maryland by purchasing from the owners thereof the Development Rights (as defined in the Authorizing Act) in Agricultural Land and Woodland (each as defined as defined in the Authorizing Act) located within the County.

B. The Seller is the owner in fee simple of certain Agricultural Land and Woodland located in Harford County, Maryland and more particularly described in Exhibit A to the Deed of Easement (hereinafter defined) (the “Land”). The Seller has offered to sell to the County the Development Rights in the Land and the County has accepted such offer, all upon and subject to the conditions set forth in this Agreement.

C. The County will receive the Seller’s Development Rights in the Land for the purposes set forth in the Authorizing Act.

D. Except for the limited transferability described herein and in the Deed of Easement, the transfer by the Seller of the Seller’s Development Rights in the Land pursuant to the Deed of Easement shall be in perpetuity.

AGREEMENTS

NOW, THEREFORE, in consideration of the foregoing and of the mutual covenants and agreements hereinafter set forth, and for other good and valuable consideration, the receipt and sufficiency whereof are hereby acknowledged, the Seller and the County hereby agree as follows:

ARTICLE I
DEFINITIONS

SECTION 1.1. Definitions. As used in this Agreement, the following terms have the following meanings, unless the context clearly indicates a different meaning:

“Agricultural Use” shall have the meaning given to that term in the Authorizing Act.

“Authorizing Act” has the meaning given to that term in the Recitals of this Agreement.

“Building Lot” means an Owner’s Lot or a Child’s Lot.

1 “Business Day” or “business day” means a day on which (a) banks located in each of the
2 cities in which the principal office of the County or the Registrar is located are not required or
3 authorized by law or executive order to close for business, and (b) The New York Stock Exchange
4 is not closed.

5 “Child’s Lot” has the meaning given to that term in the Authorizing Act.

6 “Closing Date” means _____, the date of execution and delivery of this
7 Agreement by the parties.

8 “Code” means the Internal Revenue Code of 1986, as amended. Each reference to the Code
9 herein shall be deemed to include the United States Treasury Regulations in effect or proposed
10 from time to time with respect thereto.

11 “County” means Harford County, Maryland, a body corporate and politic created and
12 existing under and by virtue of the Constitution and laws of the State, its successors and assigns.

13 “County Council” means the County Council of the County.

14 “County Executive” means the County Executive of the County.

15 “Deed of Easement” means the Deed of Easement dated _____, from the Seller
16 to the County, which shall convey the Development Rights to the County in perpetuity,
17 substantially in form attached hereto as Exhibit A and made a part hereof.

18 “Development Right” has the meaning given to that term in the Authorizing Act.

19 “Enabling Legislation” means, collectively, (1) Section 524 of the Harford County Charter,
20 (2) the Authorizing Act, (3) Bill No. 11-07 enacted by the County Council on April 5, 2011,
21 approved by the County Executive on April 12, 2011, and effective on June 13, 2011, and (4) Bill
22 No. _____, enacted by the County Council on _____, approved by the County Executive on
23 and effective _____.

24 “Land” means the tract of land located in Harford County, Maryland, containing _____
25 acres, more or less, and more particularly described in Exhibit A attached to the Deed of Easement;
26 provided, however, that if (a) a Building Lot is released by the County from the Deed of Easement,
27 such Building Lot so released shall not thereafter be considered to be part of the Land.

28 “Owner’s Lot” has the meaning given to that term in the Authorizing Act.

29 “Permitted Encumbrances” means the encumbrances listed on Exhibit B attached hereto
30 and made a part hereof and any encumbrances on or with respect to the Land or any portion thereof
31 hereafter approved by the County.

32 “Person” or “person” means any natural person, firm, association, corporation, company,
33 trust, partnership, public body or other entity.

34 “Purchase Price” has the meaning given to that term in Section 2.1.

1 “Registered Owner” means the registered owner of this Agreement as shown on the
2 registration books maintained by the Registrar.

3 “Registrar” means the Treasurer of the County, or any other person hereafter appointed by
4 resolution of the County Council to act as Registrar and paying agent for this Agreement.

5 “Seller” means Herbert W. Harkins and Patricia A. Harkins, their respective heirs and
6 personal representatives and assigns.

7 “State” means the State of Maryland.

8 SECTION 1.2. Rules of Construction. The words “hereof,” “herein,” “hereunder,”
9 “hereto,” and other words of similar import refer to this Agreement in its entirety.

10 The terms “agree” and “agreements” contained herein are intended to include and mean
11 “covenant” and “covenants.”

12 References to Articles, Sections, and other subdivisions of this Agreement are to the
13 designated Articles, Sections, and other subdivisions of this Agreement.

14 The headings of this Agreement are for convenience only and shall not define or limit the
15 provisions hereof.

16 All references made (a) in the neuter, masculine or feminine gender shall be deemed to
17 have been made in all such genders, and (b) in the singular or plural number shall be deemed to
18 have been made, respectively, in the plural or singular number as well.

19 ARTICLE II
20 SALE AND PURCHASE OF DEVELOPMENT RIGHTS

21 SECTION 2.1. Agreement to Sell and Purchase Development Rights. The Seller agrees
22 to sell all of the Development Rights in the Land to the County and the County agrees to purchase
23 all of the Development Rights in the Land from the Seller on the Closing Date for the purchase
24 price of \$_____ (the “Purchase Price”). The Purchase Price is equal to \$100,000.00 per
25 Development Right for the first six (6) Development Rights (per parcel) and \$50,000.00 for each
26 additional Development Right above six (6) (per parcel) for eleven (11) Development Rights, the
27 actual number of Development Rights in the Land, and represents the least of the three amounts
28 calculated as the Purchase Price on the basis of the following factors: (i) the Maximum Easement
29 Per Acre Value (as defined in the Authorizing Act), (ii) the Maximum Development Right Value
30 (as defined in the Authorizing Act) and (iii) Maximum Per Acre Value (as defined in the
31 Authorizing Act and also referred to therein as the “maximum per acre cap”).

32 SECTION 2.2. Delivery of Deed of Easement. In order to evidence the sale of all of
33 the Development Rights in the Land to the County, the Seller shall execute and deliver the Deed
34 of Easement to the County on the Closing Date. The Deed of Easement shall be recorded among
35 the Land Records of Harford County, Maryland on or about the Closing Date as determined by the
36 County.

ARTICLE III
PAYMENT OF PURCHASE PRICE; INCENTIVE PAYMENT

SECTION 3.1. Payment of Purchase Price; Incentive Payment.

(a) The County has paid on the Closing Date a portion of the Purchase Price in the amount of \$_____ to the Seller and shall pay the balance of the Purchase Price in the amount of \$_____ to the Registered Owner in installments on _____ and on the same day in each year thereafter to and including _____ (each an "Installment Payment Date"), in the amounts set forth in Schedule I attached hereto and made a part hereof.

(b) Interest on the unpaid balance of the Purchase Price at the fixed rate of interest equal to ___% per annum shall accrue from the date hereof and shall be payable to the Registered Owner on each Installment Payment Date. Interest shall be calculated on the basis of a 360-day year of twelve 30-day months.

(c) The Purchase Price and the interest on the unpaid balance thereof are payable in lawful money of the United States of America, at the time of payment.

(d) Payment of each installment of the Purchase Price and interest thereon shall be made by the County on each Installment Payment Date to the Registrar. The Registrar shall forward each such payment (other than the final installment of the Purchase Price) on the applicable Installment Payment Date to the person appearing on the registration books of the County maintained by the Registrar as the Registered Owner on the tenth day before the applicable Installment Payment Date, or if such tenth day is not a Business Day, the Business Day next preceding such day, by check or draft mailed to the Registered Owner at the address of the Registered Owner as it appears on such registration books on the tenth day before the applicable Installment Payment Date, or if such tenth day is not a Business Day, the Business Day next preceding such day. The final installment of the Purchase Price shall be paid by the Registrar to the Registered Owner upon presentation and surrender of this Agreement at the office of the Registrar.

(e) The County's obligation to pay the Purchase Price and the interest on the unpaid balance thereof as provided herein is a general obligation of the County, and the full faith and credit and the taxing power of the County are irrevocably pledged to the punctual payment thereof as and when the same become due and payable.

(f) The County has paid on the Closing Date a one-time cash incentive payment in the amount of \$_____ to the Seller in accordance with Section 60-12J(3) of the Authorizing Act.

SECTION 3.2. Registration and Transfer of this Agreement.

(a) Until the Purchase Price and all interest thereon have been paid in full, the Registrar, on behalf of the County, shall maintain and keep at the offices of the Registrar, registration books for the registration and registration of transfer of ownership of this Agreement. The ownership of this Agreement may not be transferred or assigned, except upon the written approval of the County.

1 (b) The Seller is the initial Registered Owner. This Agreement shall be
 2 transferable only upon the written approval of the County and upon the books of the County
 3 maintained for such purpose by the Registrar, at the written request of the Registered Owner as
 4 then shown on such registration books or such Registered Owner's attorney duly authorized in
 5 writing, together with a written instrument of transfer substantially in the form attached hereto as
 6 Exhibit C, or as may otherwise be satisfactory to and approved by the Registrar in writing, duly
 7 executed by such Registered Owner or such Registered Owner's attorney duly authorized in
 8 writing. The Registrar shall complete the Schedule of Transferees attached hereto as Exhibit D
 9 with the name, address and tax identification number of the transferee Registered Owner, the date
 10 of the transfer and the outstanding principal balance of the Purchase Price as of the date of transfer;
 11 provided, however, that if there is any conflict between the information set forth in Exhibit D
 12 hereto and the registration books maintained by the Registrar, the information shown on such
 13 registration books shall control.

14 The County and the Registrar may deem and treat the person in whose name this
 15 Agreement is registered upon the books of the County maintained by the Registrar as the absolute
 16 owner of this Agreement, whether any payments hereunder shall be overdue or not, for the purpose
 17 of receiving payment of, or on account of, the Purchase Price and interest thereon and for all other
 18 purposes, and all such payments so made to any such Registered Owner or upon his order shall be
 19 valid and effectual to satisfy and discharge the liability upon this Agreement to the extent of the
 20 sum or sums so paid, and neither the County nor the Registrar shall be affected by any notice to
 21 the contrary.

22 For every registration of transfer of this Agreement, the County or the Registrar may make
 23 a charge sufficient to reimburse themselves for any tax or other governmental charge required to
 24 be paid with respect to such exchange or transfer, which sum or sums shall be paid by the person
 25 requesting such transfer as a condition precedent to the exercise of the privilege of registering such
 26 transfer.

27 SECTION 3.3. Mutilated, Lost, Stolen or Destroyed Agreement. In the event that this
 28 Agreement is mutilated, lost, stolen or destroyed, the County and the Registered Owner (as then
 29 shown on the registration books maintained by the Registrar) shall execute a substitute for this
 30 Agreement having the same terms as that of this Agreement mutilated, lost, stolen or destroyed;
 31 provided that, in the case of any mutilated Agreement, such mutilated Agreement shall first be
 32 surrendered to the Registrar, and, in the case of any lost, stolen or destroyed Agreement there shall
 33 be first furnished to the County and the Registrar evidence of such loss, theft or destruction
 34 satisfactory to the County and the Registrar, together with indemnity satisfactory to each of them
 35 in their sole discretion. The County and the Registrar may charge the Registered Owner requesting
 36 such new Agreement their expenses and reasonable fees, if any, in this connection. If after the
 37 delivery of such substitute Agreement, a bona fide purchaser of the original Agreement (in lieu of
 38 which such substitute Agreement was issued) presents for payment such original Agreement, the
 39 County and the Registrar shall be entitled to recover such substitute Agreement from the person to
 40 whom it was delivered or any other person who receives delivery thereof, except a bona fide
 41 purchaser, and shall be entitled to recover upon the security or indemnity provided therefor or
 42 otherwise to the extent of any loss, damage, cost or expense incurred by the County and the
 43 Registrar in connection therewith.

ARTICLE IV
REPRESENTATIONS AND WARRANTIES

SECTION 4.1. Representations and Warranties of the County. The County makes the following representations and warranties:

(a) The County is a body corporate and politic and a political subdivision of the State.

(b) The County has the necessary power and authority to acquire the Development Rights in the Land, to enter into this Agreement, to perform and observe the covenants and agreements on its part contained in this Agreement and to carry out and consummate all transactions contemplated hereby. By proper action, the County has duly authorized the execution and delivery of this Agreement.

(c) This Agreement has been duly and properly authorized, executed, sealed and delivered by the County, constitutes the valid and legally binding obligation of the County, and is enforceable against the County in accordance with its terms.

(d) There are no proceedings pending or, to the knowledge of the County, threatened before any court or administrative agency which may affect the authority of the County to enter into this Agreement.

SECTION 4.2. Representations and Warranties of the Seller. The Seller makes the following representations and warranties:

(a) The Seller has full power and authority to execute and deliver this Agreement and the Deed of Easement, and to incur and perform the obligations provided for herein and therein. No consent or approval of any person or public authority or regulatory body is required as a condition to the validity or enforceability of this Agreement or the Deed of Easement, or, if required, the same has been duly obtained.

(b) This Agreement and the Deed of Easement have been duly and properly executed by the Seller, constitute valid and legally binding obligations of the Seller, and are fully enforceable against the Seller in accordance with their respective terms.

(c) There is no litigation or proceeding pending or, so far as the Seller knows, threatened before any court or administrative agency which, in the opinion of the Seller, would materially adversely affect the authority of the Seller to enter into, or the validity or enforceability of, this Agreement or the Deed of Easement.

(d) There is (i) no provision of any existing mortgage, indenture, contract or agreement binding on the Seller or affecting the Land, and (ii) to the knowledge of the Seller, no provision of law or order of court binding upon the Seller or affecting the Land, which would conflict with or in any way prevent the execution, delivery, or performance of the terms of this Agreement or the Deed of Easement, or which would be in default or violated as a result of such execution, delivery or performance, or for which adequate consents, waivers or, if necessary, subordinations, have not been obtained.

1 (e) There exist no liens or security interests on or with respect to the Land (other
2 than Permitted Encumbrances).

3 (f) The Seller is not a nonresident alien of the United States of America for
4 purposes of federal income taxation.

5 (g) By a separate, non-public document, the Seller shall disclose each of the
6 Seller’s Social Security Number to the County. The Seller shall, upon request of the County,
7 execute U.S. Treasury Form W-9 and deliver the same to the County for filing.

8 The representations in subsections (f) and (g) above are made under penalties of perjury
9 and the information contained therein may be disclosed by the County to the Internal Revenue
10 Service. The Seller acknowledges that any false statement in such subsections or the documents
11 referred to therein could be punished by fine, imprisonment or both.

12 ARTICLE V
13 PROVISIONS RELATING TO EXCLUSION
14 OF INTEREST FROM INCOME FOR FEDERAL INCOME TAXATION

15 SECTION 5.1. Intent of County and Tax Covenant of County. The County intends that
16 the interest payable under this Agreement shall not be includible in the gross income of the
17 Registered Owner for purposes of federal income taxation pursuant to Section 148 of the Code.
18 Accordingly, the County shall not knowingly take or permit to be taken any other action or actions
19 or omit or fail to take any action, which would cause this Agreement to be an “arbitrage bond” within
20 the meaning of Section 148 of the Code, or which would otherwise cause interest payable under this
21 Agreement to become includible in the gross income of any Registered Owner for purposes of
22 federal income taxation pursuant to Section 148 of the Code.

23 SECTION 5.2. Acknowledgment of Seller with Regard to Tax Consequences of
24 Transaction. The Seller hereby acknowledges receipt of an opinion from Miles & Stockbridge P.C.,
25 Bond Counsel, dated the Closing Date, to the effect that under existing laws, regulations, rulings and
26 decisions, interest payable under this Agreement is not includible in the gross income of the
27 Registered Owner for federal income tax purposes, which opinion assumes continuous compliance
28 with certain covenants in the Tax Certificate and Compliance Agreement to be executed and delivered
29 by the County on the date of delivery of this Agreement and assumes that the Land will be used solely
30 for Agricultural Use and is otherwise limited in accordance with its terms. The Seller acknowledges
31 that the Seller has made the Seller’s own independent investigation and has consulted with attorneys,
32 accountants and others selected by the Seller in the Seller’s sole discretion with respect to all other
33 tax considerations related to the transaction contemplated hereby (including, but not limited to,
34 installment sales treatment under Section 453 of the Code, charitable contribution deductions under
35 Section 170 of the Code, exchange of like property under Section 1031 of the Code, and federal
36 estate tax implications); and the Seller certifies that the Seller has not looked to or relied upon the
37 County or any of its officials, agents or employees, or to Bond Counsel, with respect to any of
38 such matters.

39 ARTICLE VI
40 THE REGISTRAR

1 SECTION 6.1. Appointment of Registrar. The Treasurer of the County is hereby
2 designated and appointed to act as Registrar for this Agreement.

3 SECTION 6.2. Change of Registrar and Appointment of Successor Registrar. The
4 County shall have the right to change the Registrar at any time by filing with the Registrar to be
5 removed, and with the Registered Owner, a resolution of the County Council appointing a successor
6 Registrar. Notwithstanding the foregoing, such removal shall not be effective until a successor
7 Registrar has accepted such appointment and assumed the Registrar's duties hereunder.

8 SECTION 6.3. Qualifications of Successor Registrar. Any successor Registrar shall be
9 either (a) the Treasurer of the County, (b) an officer or employee of the County, or (c) a bank, trust
10 company or other financial institution duly organized under the laws of the United States or any state
11 or territory thereof which is authorized by law and permitted under the laws of the State to perform all
12 the duties imposed upon it as Registrar by this Agreement.

13 SECTION 6.4. Successor by Merger or Consolidation. If the Registrar is a bank, trust
14 company or other financial institution, any institution or corporation into which the Registrar
15 hereunder may be merged or converted or with which it may be consolidated, or any corporation
16 resulting from any merger or consolidation to which the Registrar hereunder shall be a party or
17 any institution or corporation succeeding to the corporate trust business (if any) of the Registrar,
18 shall be the successor Registrar under this Agreement, without the execution or filing of any paper
19 or any further act on the part of the parties hereto, anything in this Agreement to the contrary
20 notwithstanding.

21 ARTICLE VII
22 MISCELLANEOUS

23 SECTION 7.1. Successors of County. In the event of the dissolution of the County, all
24 the covenants, stipulations, promises and agreements in this Agreement contained, by or on behalf
25 of, or for the benefit of, the County, the Seller, any other Registered Owner and the Registrar, shall
26 bind or inure to the benefit of the successors of the County from time to time and any entity, officer,
27 board, commission, agency or instrumentality to whom or to which any power or duty of the
28 County shall be transferred.

29 SECTION 7.2. Parties in Interest. Except as herein otherwise specifically provided,
30 nothing in this Agreement expressed or implied is intended or shall be construed to confer upon
31 any person, firm or corporation, other than the County, the Seller, any other Registered Owner and
32 the Registrar, any right, remedy or claim under or by reason of this Agreement, this Agreement
33 being intended to be for the sole and exclusive benefit of the County, the Seller, any other
34 Registered Owner from time to time of this Agreement and the Registrar.

35 SECTION 7.3. Binding Effect. This Agreement shall be binding upon and inure to the
36 benefit of the parties hereto, their respective heirs, personal representatives, successors and
37 assigns, including, without limitation, all Registered Owners from time to time of this Agreement.

38 SECTION 7.4. Severability. In case any one or more of the provisions of this Agreement
39 shall, for any reason, be held to be illegal or invalid, such illegality or invalidity shall not affect any

1 other provisions of this Agreement and this Agreement shall be construed and enforced as if such
2 illegal or invalid provisions had not been contained herein or therein.

3 SECTION 7.5. Prior Agreements Canceled; No Merger. This Agreement shall
4 completely and fully supersede all other prior agreements, both written and oral, between the County
5 and the Seller relating to the acquisition of the Development Rights. Neither the County nor the Seller
6 shall hereafter have any rights under such prior agreements but shall look solely to this Agreement
7 and the Deed of Easement for definitions and determination of all of their respective rights, liabilities
8 and responsibilities relating to the Land, the Development Rights, and the Family Conveyances and
9 the payment for the Development Rights and the Family Conveyances. In addition, this Agreement
10 shall survive the execution and recording of the Deed of Easement in all respects and shall not be
11 merged therein.

12 SECTION 7.6. Amendments, Changes and Modifications. This Agreement may not be
13 amended, changed, modified, altered or terminated except by an agreement in writing between the
14 County and the Registered Owner. An executed counterpart of any such amendment shall be
15 attached to this Agreement and shall be binding upon the Registered Owner and all successor
16 Registered Owners.

17 SECTION 7.7. No Personal Liability of County Officials. No covenant or agreement
18 contained in this Agreement shall be deemed to be the covenant or agreement of any official,
19 officer, agent or employee of the County in his or her individual capacity, and neither the officers
20 or employees of the County, nor any official executing this Agreement shall be liable personally
21 on this Agreement or be subject to any personal liability or accountability by reason of the issuance
22 thereof.

23 SECTION 7.8. Governing Law. The laws of the State shall govern the construction and
24 enforcement of this Agreement.

25 SECTION 7.9. Notices. Except as otherwise provided in this Agreement, all notices,
26 demands, requests, consents, approvals, certificates or other communications required under this
27 Agreement to be in writing shall be sufficiently given and shall be deemed to have been properly
28 given three Business Days after the same is mailed by certified mail, postage prepaid, return receipt
29 requested, addressed to the person to whom any such notice, demand, request, approval, certificate
30 or other communication is to be given, at the address for such person designated below:

31
32
33

34 County: Harford County, Maryland
35 Administrative Offices
36 220 South Main Street
37 Bel Air, Maryland 21014
38 Attention: Treasurer

39
40 with a copy to: Melissa L. Lambert, Esquire

1 County Attorney
2 Administrative Offices
3 220 South Main Street
4 Bel Air, Maryland 21014

5
6 Seller Hebert W. Harkins and Patricia A. Harkins
7 236 Chestnut Hill Road
8 Forest Hill, Maryland 21050

9
10 Registrar: Robert F. Sandlass
11 Treasurer
12 Administrative Offices
13 220 South Main Street
14 Bel Air, Maryland 21014
15

16 Any of the foregoing may, by notice given hereunder to each of the others, designate any further
17 or different addresses to which subsequent notices, demands, requests, consents, approvals,
18 certificates or other communications shall be sent hereunder.

19 SECTION 7.10. Holidays. If the date for making any payment or the last date for
20 performance of any act or the exercising of any right, as provided in this Agreement, shall not be a
21 Business Day, such payment may, unless otherwise provided in this Agreement, be made or act
22 performed or right exercised on the next succeeding Business Day with the same force and effect as
23 if done on the nominal date provided in this Agreement, and in the case of payment no interest shall
24 accrue for the period after such nominal date.

25 [SIGNATURES APPEAR ON THE FOLLOWING PAGE]

1 WITNESS the signatures and seals of the parties hereto as of the date first above written.

2
3 HARFORD COUNTY, MARYLAND

4
5 [COUNTY'S SEAL]

6
7 By: _____
8 Barry Glassman
9 County Executive

10
11 ATTEST:

12
13
14 _____
15 Ben Lloyd
16 Director of Administration

17
18
19
20 WITNESS:

SELLER:

21
22
23 _____ (SEAL)
24 HERBERT W. HARKINS

25
26
27 _____ (SEAL)
28 PATRICIA A. HARKINS

29
30
31

As Introduced

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4 INSTALLMENTS OF
5 DEFERRED PORTION OF PURCHASE PRICE
6 (HERBERT W. HARKINS and PATRICIA A. HARKINS)
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<u>Date of Payment</u>	<u>Amount Payable</u>
_____, 20__	\$ _____
_____, 20__	\$ _____
_____, 20__	\$ _____
_____, 20__	\$ _____
_____, 20__	\$ _____
_____, 20__	\$ _____
_____, 20__	\$ _____
_____, 20__	\$ _____
_____, 20__	\$ _____
_____, 20__	\$ _____
_____, 20__	\$ _____
Total Deferred Portion	\$ _____
Amount paid on Closing Date	\$ _____
TOTAL DISTRIBUTIONS	\$ _____

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EXHIBIT A
TO INSTALLMENT
PURCHASE AGREEMENT

FORM OF DEED OF EASEMENT

As Introduced

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DEED OF EASEMENT

THIS DEED OF EASEMENT made this ____ day of _____ 20__, by and between HERBERT W. HARKINS and PATRICIA A. HARKINS, party of the first part, Grantor (the “Grantor”), and HARFORD COUNTY, MARYLAND, party of the second part, Grantee (the “Grantee” or the “County”).

Explanatory Statement

A. Pursuant to Article II of Chapter 60 of the Harford County Code, as amended (the “Act”), the County Council of Harford County, Maryland (the “County Council”) created the Agricultural Land Preservation and Purchase of Development Rights Program to preserve productive Agricultural Land and Woodland (each as defined in the Act), which provide for the continued production of food and fiber for the citizens of the County.

B. By authority of the Act, the Grantee may purchase Development Rights (as defined in the Act) from agricultural landowners by subjecting the subject property to a Development Rights Easement (as defined in the Act) in perpetuity in the manner more specifically provided in the Act.

C. The Grantor is the fee simple owner of the hereafter described parcel(s) of Agricultural Land (as defined in the Act) located in the County and desires to sell and convey to the Grantee a Development Rights Easement to restrict the use of such land to Agricultural Use (as defined in the Act) in accordance with the Act and as hereinafter set forth.

D. Bill No. _____, enacted by the County Council on_____, approved by the County Executive on _____ and effective _____, authorizes the County to purchase from the Grantor the Development Rights in certain Agricultural Land owned by the Grantor and containing not to exceed _____ acres.

NOW, THEREFORE, in consideration of the sum of _____ Thousand Dollars (\$ _____) and other valuable consideration, the receipt of which is hereby acknowledged, the Grantor does hereby grant and convey to Harford County, Maryland, as Grantee, its successors and assigns, a Development Rights Easement, in perpetuity, together with and subject to the covenants, conditions, limitations and restrictions hereafter set forth so as to constitute and equitable servitude thereon, in, under and over the parcel(s) of land situate in the _____ Election District of Harford County, Maryland and being more particularly described in Exhibit A attached hereto (the “Land”).

AND FURTHER, together with all Development Rights (with the exception of the right reserved to the Grantor and successors and assigns to maintain an owner residence and/or Tenant House (as defined in the Act), in either case, situate on the Land on the date hereof).

AND FURTHER, if no such owner residence and/or Tenant House exists on the Land on the date hereof, there is reserved to the Grantor and successors and assigns, subject to the provisions of Section E of “Covenants, Conditions, Limitations and Restrictions” below, the right to construct one owner residence and/or Tenant House on the Land, and after execution of this Deed

1 of Easement, such owner residence and/or Tenant House, as the case may be, if approved pursuant
2 to Section E, shall not be subdivided off of the Land.

3 AND, FURTHER, the Grantor covenants for himself/herself, and for his/her respective
4 heirs, personal representatives and assigns, with the Grantee, its successors and assigns, to do and
5 refrain from doing upon the Land all and any of the various acts hereafter set forth, it being the
6 intention of the parties that the Land shall be preserved solely for the Agricultural Use as defined
7 in and in accordance with the provisions of the Act, and that all and any of the various acts
8 hereafter set forth are intended to limit the use of the Land and are deemed to be and shall be
9 construed as covenants running with the Land.

10 COVENANTS, CONDITIONS, LIMITATIONS AND RESTRICTIONS

11 Subject to the reservations hereinafter contained and except as otherwise provided herein,
12 the Grantor, for himself/herself and his/her respective heirs, personal representatives and assigns,
13 covenants and agrees with Grantee as follows:

14 A. The Land may not be developed or otherwise used for other than Agricultural Use.

15 B. The Land shall be maintained in Agricultural Use or properly managed so that it is
16 available for continued Agricultural Use from the date of the recording of this Deed of Easement
17 among the Land Records of the County.

18 C. At the time of establishment of the easement hereby granted, a soil and water
19 conservation plan as prepared by the Soil Conservation District shall be implemented and
20 maintained with respect to the Land.

21 D. The Grantor will not allow any type of residential subdivision, other than that
22 outlined in this Deed of Easement and permitted by the Act with respect to an Owner's Lot and a
23 Child's Lot (each as defined in the Act).

24 E. The construction of new buildings or structures on the Land, including, without
25 limitation, any owner residence or Tenant House on a non-subdividable parcel, but excluding farm
26 buildings that did not exist at the time of the establishment of the easement hereby granted, is
27 contingent upon the written application to and approval by the Department of Planning and Zoning,
28 subject to review by and recommendation of the Agricultural Land Preservation Advisory Board.

29 F. Subject to the provisions of paragraphs G and H hereof:

30 1. The Grantor may at any time hereafter request a two (2) acre or less lot
31 exclusion for the exclusive residential use of the Grantor. Such request (a) must be made by letter
32 provided to the Department of Planning and Zoning of the County verifying the Grantor's intention
33 to live in a dwelling situate within any lot so excluded and (b) shall be subject to review and
34 recommendation of the Agricultural Land Preservation Advisory Board of the County. In addition,
35 the use and occupancy permit must be in the name of the Grantor; and the Owner's Lot may not
36 be sold or transferred for a period of five (5) years from the date of issuance of the use and
37 occupancy permit except in the event of the death or legal incompetence of the Grantor or if the
38 lot is part of bankruptcy proceedings; or with approval of the Department of Planning and Zoning,

1 subject to review and recommendation of the Agricultural Land Preservation Advisory Board.
2 Upon such request and recommendation of the Agricultural Land Preservation Advisory Board,
3 the Grantee shall execute and deliver to the Grantor, his/her personal representatives, successors
4 and assigns, an instrument in recordable form releasing such lot from the force and effect of this
5 Deed of Easement and all covenants, conditions, limitations and restrictions herein set forth.

6 2. The Grantor may at any time hereafter request the right to construct, use
7 and occupy a tenant home on the Land in accordance with the conditions established within Section
8 267-27(D)(5) of the Harford County Code, as amended. Such request (a) must be made by letter
9 provided to the Department of Planning and Zoning and (b) shall be subject to review and
10 recommendation of the Agricultural Land Preservation Advisory Board. The tenant house shall
11 not be subdivided off of the Land.

12 3. The Grantor may at any time hereafter request in writing to the Department
13 of Planning and Zoning a two (2) acre or less lot exclusion for the exclusive residential use of a
14 Child (as defined in the Act). Such request (a) must be from both Grantor and the Child verifying
15 the intention of the Child to live in a dwelling situate within the lot so excluded and (b) shall be
16 subject to the review and recommendation of the Agricultural Land Preservation Advisory Board.
17 In addition, the building permit and the owner occupancy permit must be in the Child's name. The
18 Child's Lot may not be sold or transferred for a period of five (5) years from the date of issuance
19 of the use and occupancy permit except in the event of the death or the legal incompetence of the
20 Child or if the Child's Lot is part of bankruptcy proceedings; or with approval of the Department
21 of Planning and Zoning, subject to review and recommendation of the Agricultural Land
22 Preservation Advisory Board. Upon such request and recommendation of the Agricultural Land
23 Preservation Advisory Board, the Grantee shall execute and deliver to the Child, his/her personal
24 representatives, successors and assigns, an instrument in recordable form releasing the Child's Lot
25 from the force and effect of this Deed of Easement and all covenants, conditions, limitations and
26 restrictions herein set forth.

27 G. The exclusion of lots pursuant to the provisions of paragraph F above from the force
28 and effect of this Deed of Easement and all covenants, conditions, limitations and restrictions
29 herein set forth shall be subject to the following conditions:

30 1. The total number of such lot exclusions may not exceed one (1) lot for each
31 twenty-five (25) acres contained within the Land or four (4) lots per easement property, whichever
32 is less; and

33 2. The maximum size of any lot so excluded may not exceed a maximum lot
34 area of two (2) acres, including within such area all County right-of-way requirements unless
35 waived by the Department of Planning and Zoning, with the review and recommendation of the
36 Agricultural Land Preservation Advisory Board; and

37 3. The Grantor requesting a lot exclusion shall be required to repay the County
38 for each lot so excluded in an amount equal to the amount paid per acre by the County to the
39 Grantor to acquire the Land, plus all costs associated with the establishment of such lot.

1 H. The rights reserved to the Grantor under paragraph F to request a lot exclusion shall
2 be deemed a personal covenant only, and one that is not intended to run with the Land and shall
3 belong only to, and may be exercised only, by the Grantor named in this Deed of Easement.
4

5 I. Notwithstanding anything to the contrary herein contained, the exclusion of any
6 Child's Lot or Owner's Lot from the encumbrance of this Deed of Easement shall become void
7 upon the earlier to occur of (i) the death of the Child or Landowner (as applicable) for whose
8 benefit the exclusion was granted if the Grantee has not received a use and occupancy permit
9 therefor at the time of the Child's or Landowner's death (as applicable) and (ii) the fifth
10 anniversary of the date the Grantee granted the exclusion if a use and occupancy permit in the
11 name of the Child or Landowner (as applicable) has not been received by the Grantee by such fifth
12 anniversary. In the event that the exclusion of a Child's Lot or Owner's Lot (as applicable)
13 becomes void as provided above, the Grantor shall promptly execute and deliver, or promptly
14 cause to be executed and delivered, to the Grantee an instrument in recordable form subjecting the
15 Child's Lot or Owner's Lot (as applicable) to this Deed of Easement and all covenants, conditions,
16 limitations and restrictions herein set forth.

17 J. The Grantor and all future landowners of the Land reserve the right to use the Land
18 for any Agricultural Use and further reserve all other rights, privileges and incidents to the
19 ownership of the fee simple estate in the Land that have not been conveyed hereby or otherwise
20 limited by the covenants, conditions, limitations and restrictions herein set forth.

21 K. This instrument shall not be deemed to provide for or permit public access to any
22 privately owned land except for periodic inspections by the Grantee.

23 L. No conveyances, oil, gas or mineral leases, or similar servitude, no rights of way
24 or easements for utilities or roadways or any other restrictions, including other conservation
25 easements such as forest easements and wetland easements, may be granted to any person or
26 government agency in, on, over or under the Land without the prior written approval of the
27 Grantee, which may condition its approval in accordance with its regulations.

28 M. The Grantee, its employees and agents shall have the right to enter the Land at all
29 reasonable times for the purpose of inspecting and surveying the Land to determine whether the
30 Grantor is complying with the provisions of this Deed of Easement. The Grantor specifically grants
31 permission to the Grantee to photograph and record the Land, structures and activities being
32 conducted upon the Land. The Grantee shall provide prior notice to Grantor at the Grantor's last
33 known address, unless the Grantee determines that immediate entry is required to prevent,
34 terminate, or mitigate an alleged or actual violation of this Deed of Easement. In the course of
35 such inspection, the Grantee may not inspect the interior of any structure. However, if the Grantee
36 has a reason to believe that a structure (for example, a barn) has been converted to a dwelling or a
37 structure has been built to contain a dwelling without the Grantee's approval, written notice of a
38 suspected violation will be provided to the Grantor, including the reasons for suspicion. The
39 Grantor shall be provided a reasonable period of time to cure the violation or prevent the threatened
40 violation. Subsequently, the Grantee shall schedule another inspection and may enter the interior
41 of the structure in question.

1 N. The easement conveyed to the Grantee on the Land is based upon _____ acres and
2 eleven (11) Development Rights.

3 The Grantor is a Landowner (as defined in the Act). The Grantor owns the Land as [tenants
4 in common][tenants by the entireties][joint tenants].

5 Pursuant to Treasury Regulation Section 1.170A-14(g)(6), the Grantor hereby
6 acknowledges and agrees that the Grantee shall have a vested property right at least equal to the
7 proportionate value of the Development Rights Easement granted herein as it bears to the value of
8 the Land as a whole in accordance with the aforementioned Income Tax Regulation Section.

9 Upon any breach of a provision of this Deed of Easement by the Grantor, and after due
10 notice to the Grantor, the Grantee may institute suit to enjoin any such breach or enforce any
11 provision by temporary, *ex parte* and/or permanent injunction, either prohibitive or mandatory,
12 including a temporary restraining order, whether by *in rem*, *quasi in rem* or *in personam*
13 jurisdiction; and require that the Land be restored promptly to the condition required by this Deed
14 of Easement at the expense of the Grantor (including, but not limited to, re-conveyance of title to
15 land conveyed in violation of provisions herein); to recover damages; to impose civil penalties;
16 and to take such other legal action as may be necessary to ensure compliance with this Deed of
17 Easement and the covenants, conditions, limitations and restrictions and other provisions herein
18 contained. The Grantee's remedies shall be cumulative and shall be in addition to all appropriate
19 legal proceedings and any other rights and remedies available to Grantee at law or equity. No
20 failure or delay on the part of the Grantee to enforce any provision of this Deed of Easement shall
21 constitute a waiver or otherwise discharge or invalidate any provision of this Deed of Easement
22 or affect the right of the Grantee to enforce this Deed of Easement.

23 The Grantor further covenants that the Grantor has not done or suffered to be done any act,
24 matter or thing whatsoever, to encumber the property hereby conveyed; that Grantor will warrant
25 specially the property interest hereby conveyed; and the Grantor will execute such further
26 assurances of the same as may be required.

27 As used herein, the singular form of a word includes both the singular and plural, the plural
28 form of a word includes both plural and singular, and reference the words of certain gender
29 includes reference to all genders.

30 No determination by any court, governmental body or otherwise that any provision of this
31 Deed of Easement is invalid or unenforceable in any instance shall affect the validity or
32 enforceability of (a) any other such provision or (b) such provision in any circumstance not
33 controlled by such determination. Each such provision shall be valid and enforceable to the fullest
34 extent allowed by, and shall be construed wherever possible as being consistent with, applicable
35 law.

36 [SIGNATURES APPEAR ON FOLLOWING PAGE]

1 WITNESS THE HAND AND SEAL of the undersigned.

2
3 WITNESS:

GRANTOR:

4
5
6
7 _____

_____(SEAL)

8 HERBERT W. HARKINS

9
10
11 _____

_____(SEAL)

12 PATRICIA A. HARKINS

13
14
15
16 STATE OF MARYLAND, COUNTY OF _____, TO WIT:

17
18 I HEREBY CERTIFY that on this ____ day of _____, 20__, before me, the
19 Subscriber, a Notary Public in and for the State and County aforesaid, personally appeared Herbert
20 W. Harkins, known to me (or satisfactorily proven) to be the person whose name is subscribed to
21 the within instrument, and he acknowledged that he executed the same for the purposes therein
22 contained.

23
24 WITNESS my hand and Notarial Seal.

25
26 _____
27 Notary Public

28
29 My Commission Expires: _____

30
31 STATE OF MARYLAND, COUNTY OF _____, TO WIT:

32
33 I HEREBY CERTIFY that on this ____ day of _____, 20__, before me, the
34 Subscriber, a Notary Public in and for the State and County aforesaid, personally appeared Patricia
35 A. Harkins, known to me (or satisfactorily proven) to be the person whose name is subscribed to
36 the within instrument, and she acknowledged that she executed the same for the purposes therein
37 contained.

38
39 WITNESS my hand and Notarial Seal.

40
41 _____
42 Notary Public

43
44 My Commission Expires:

1 I HEREBY CERTIFY that the foregoing Deed of Easement was prepared on behalf of and
2 at the request of Harford County, Maryland by or under the supervision of a member of the Bar of
3 the Court of Appeals of Maryland.
4
5
6

7 _____
8 Francina J. Brinker
9
10

AS Introduced

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EXHIBIT A
TO DEED OF EASEMENT
Description of Land

As Introduced

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EXHIBIT B
TO INSTALLMENT
PURCHASE AGREEMENT

PERMITTED ENCUMBRANCES

As Introduced

EXHIBIT C
TO INSTALLMENT
PURCHASE AGREEMENT

ASSIGNMENT
OF
INSTALLMENT PURCHASE AGREEMENT
BETWEEN
HERBERT W. HARKINS and PATRICIA A. HARKINS
AND
HARFORD COUNTY, MARYLAND
DATED _____

FOR VALUE RECEIVED, _____ (the "Registered Owner"), subject to the approval of Harford County, Maryland, hereby sell[s], assign[s] and transfer[s] unto _____ without recourse, [all] of the Registered Owner's right, title and interest in and to the Installment Purchase Agreement referenced above; and the Registered Owner's hereby irrevocably directs the Registrar (as defined in such Agreement) to transfer ownership of such Agreement on the books kept for registration thereof. The Registered Owner hereby represents, warrants and certifies that there have been no amendments to such Agreement [except _____].

Date: _____

WITNESS OR ATTEST: [_____]

NOTICE: The signature on this Assignment must correspond with of the name of the Registered Owner as it appears on the registration books for the Installment Purchase Agreement referred to herein in every particular, without alteration or enlargement or any change whatever.

ADD NOTARY ACKNOWLEDGMENT

Transfer of the Installment Purchase Agreement as indicated above is approved this _____ day of _____, 20____.

1
2
3
4
5
6
7
8

Harford County, Maryland

By: _____
Name:
Title:

As Introduced

EXHIBIT D
TO INSTALLMENT
PURCHASE AGREEMENT

TRANSFER OF AGREEMENT - SCHEDULE OF TRANSFEREES

This Installment Purchase Agreement shall be transferable only upon the written approval of the County and upon the registration books of the County maintained by the Registrar pursuant to Section 3.2 of this Installment Purchase Agreement, at the written request of the Registered Owner as then shown on such registration books or such Registered Owner's attorney duly authorized in writing, together with a written instrument of transfer substantially in the form attached hereto as Exhibit C, or as may otherwise be satisfactory to and approved by the Registrar in writing, duly executed by such Registered Owner or such Registered Owner's attorney duly authorized in writing.

<u>Date of Registration of Transfer</u>	<u>Name of Transferee Registered Owner</u>	<u>Outstanding Balance of Purchase Price</u>	<u>Signature of Registrar</u>
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